IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION No : 1 of 2000

Between:

P.Daniel, S/o P.Devabhaktudu,

Hindu, aged about 55 years, r/o Ramapuram, Banaganapalli

Mandal, Kurnool District.

..... PETITIONER

AND

1. The A.P.Transco, rep. by its Chairman and Managing Director, Vidyut Soudha, Khairatabad, Hyderabad.
2. The Chief Engineer, Electricity, A.P.Transco, Cuddapah, Cuddapah District.
3. The Superintending Engineer, Electricity, Assessment Circle, Cuddapah.
4. The Assistant Divisional Engineer, A.P. Transco, CCO, Banaganapalle, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the order of the 2nd respondent issued in proceedings Lr.No.CE/C2/CDP/C&P/221/A, 99-98-KNL/D.No.5334/98 dated 20.10.1998 confirming the order of the third respondent vide proceeding No.SE/A/CDP/EAO/D.NDL/F.45/97-98/D.No.197/98 dated 26.06.1998 as illegal, arbitrary and violative of Articles 14 and 21 of Constitution of India and consequently set aside the same.

Counsel for the Petitioner:MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents.: SMT.M.VINOBHA DEVI, Standing Counsel for A.P. Transco.

The Court made the following :

ORDER:

The petitioner, who is running a small scale Unit of Stone Polishing at a remote village in Kurnool District, files this writ petition, *inter alia*, seeking to assail the impugned proceedings of the second respondent dated 20-10-1998 dismissing appeal and confirming the orders of the third respondent dated 26-06-1998 in regard to the assessment made on the irregularities found during the inspection.

The case of the petitioner is that on 22-11-1997 the fourth respondent has made the first inspection where no irregularities were found. Further immediately after one month on 23-12-1997 during inspection, it was alleged that there is a pilferage of energy by meddling with the mechanism of the meter committed by the petitioner and the present proceedings are initiated after following the procedure. Initially, the assessment was made provisionally at Rs.13,81,589/-, which at the stage of final assessment, was reduced to Rs.3,30,275/-. Ultimately on appeal, it was further reduced to Rs.2,82,476/-. It is contended that even in regard to such assessment, which has been allowed at the stage of appeal on a quite higher side, there would not have been such an extent of consumption to warrant imposition to levy amounts. Hence, the writ petition.

The contest in the petitioner's claim, it is submitted that having regard to the nature of allegations as found against the petitioner, it cannot be said that there is no pilferage and the assessment made is also quite on proper basis and reasonable

and the petitioner has sufficiently got relief at every level and therefore does not call for any interference.

Considering the submissions made and on perusal of the material, it is seen that there is no dispute in regard to the inspection made on 22-11-1997 and nothing was found however it is only in the inspection made by the fourth respondent on 22.11.1997 the imputation is being made against the petitioner on the following incriminating points:

"1) When the motors are working, the energy meter

disc is found rotating in back ward direction.

2. When the energy meter is tested with a 4 KW heater the energy meter disc is found rotated in back ward direction in two phases and not rotated in third phase.

3. The wooden meter box C.Ts. compartment seal wire of the seal bit is found cut and the seal is hanging. The latches and their fixing screws of the meter box are also found loose.

4. The meter box door is opened and observed that the insulation tapes provided at the peeled portions of primary 'R' and 'Y' phases cables are removed and the potential leads are just hooked to the alluminium leads of the cables instead of binding.

5. On detailed examination it is found that the 'R' phase potential is connected at 'Y' phase terminal in the meter terminal block and vice-versa.

6. The potential is not observed at 'B' phase terminal in the terminal block."

Challenging the said allegations, the petitioner sought to explain by saying that there could not be such serious acts committed by him when everything was found just one month prior to. However, this explanation was not accepted by both the authorities and ultimately held that the petitioner is responsible for such alleged acts. In view of such concurrent finding arrived at by both the authorities, this Court cannot go into the same in exercise of powers conferred under Article 226 of the

Constitution of India.

However, coming to the quantum of assessment arrived at by both the authorities, it is seen that there is a drastic reduction at every level and ultimately an amount of Rs.13,81,589/- is brought down to Rs.2,82,476/-. It is submitted by the learned counsel for the petitioner that half of the said amount has already been deposited. Be that as it may, having regard to the facts and circumstances of the case, it cannot be said that the assessment as made finally is on proper basis and reasonable. Further, having regard to the fact that it seems that the inspection made as long as on 22.12.1997, no purpose would be served going into the question of assessment afresh. In the circumstances, the final assessment as made against the petitioner at Rs.2,82,476/- is reduced to 25%.

The writ petition is partly allowed reducing the amount of Rs.2,82,476/- at 25%, which comes to Rs.2,11,857/-. No costs.

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B. PRAKASH RAO, J

30th December 2004.

Chvn/Glv.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, the thirtieth day of December
two thousand and four.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1. The Chairman and Managing Director, A.P.Transco, Vidyut Soudha, Khairatabad, Hyderabad.
2. The Chief Engineer, Electricity, A.P.Transco, Cuddapah, Cuddapah District.
3. The Superintending Engineer, Electricity, Assessment Circle, Cuddapah.
4. The Assistant Divisional Engineer, A.P. Transco, CCO, Banaganapalle, Kurnool District.
5. Two C.D. copies.